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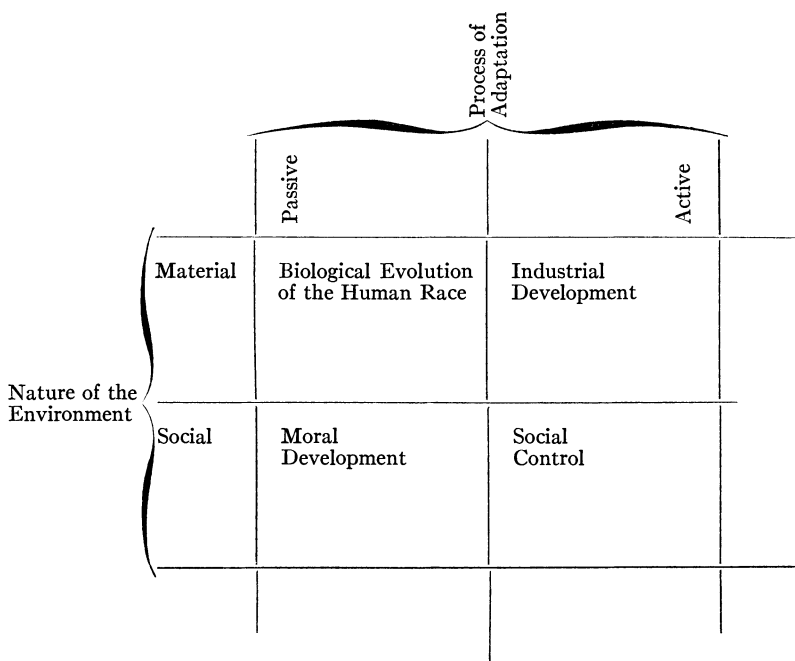
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active when the environment is modified to fit the organism. It is also of two sorts according to the environment which surrounds the organism. The environment is either *material* or *social*. A cross-classification according to these two bases of characterization gives us four general subdivisions of the subject as shown in the accompanying diagram.



T. N. CARVER

HARVARD UNIVERSITY

WASHINGTON NOTES

THE BANK GUARANTY DECISION

UNCONSTITUTIONALITY OF THE PEONAGE LAW

POTASH NEGOTIATIONS

WOMAN AND CHILD LABOR INQUIRY

ARGUMENT IN THE RATE CASES

THE TARIFF COMMISSION BILL

The Supreme Court of the United States has rendered what will probably rank as a leading decision in connection with the guaranty of bank deposits. This is the opinion in the case of

the *Noble State Bank v. C. N. Haskell et al.*, which came before the court from the Supreme Court of Oklahoma (No. 71, October term, 1910), the opinion being handed down on January 3, 1911. This was a proceeding against the governor of the state of Oklahoma and other officials who constituted the State Banking Board, to prevent them from levying an assessment upon the Noble State Bank under an act approved in 1907 and popularly known as the Oklahoma State Bank Guaranty Law. The act created this board and ordered it to levy upon every bank existing under the laws of the state an assessment of 1 per cent of the bank's average daily deposits for the purpose of creating a depositors' guaranty fund. Later the assessment was raised to 5 per cent. The purpose of the fund was to insure the depositors the amounts due them from an insolvent bank. The Noble State Bank urged that it was solvent and did not want the help of the guaranty fund, and hence that it could not be called upon to contribute toward securing the depositors in other banks in view of art. i, sec. x, and the Fourteenth Amendment of the Constitution of the United States. The petition of the Noble State Bank was dismissed by the Oklahoma Supreme Court.

In deciding this case, the Supreme Court now upholds the state court and the Oklahoma law, on the ground that the broad words of the Fourteenth Amendment cannot wisely be pressed to a logical extreme, while the claim that the assessment takes private property for private use without compensation is not warranted, since the court has held in the past that an ulterior public advantage may justify a comparatively insignificant taking of private property for what in its immediate purpose is a private use. The police power, the court thinks, extends to all great public needs, and in this class may be placed the protection of checks drawn against bank deposits. If, then, a state thinks that the public welfare requires a guaranty, both analogy and principle are in favor of the power to enact. The priority of the claim given to depositors is incidental to the object of public safety or welfare and is justified in the same way. The power to establish such a guaranty is upheld, moreover, by analogy on the same principle as the power to establish a minimum of capitalization. "In short," says the court, "when the Oklahoma legislature declares by implication that free banking is a public danger, and that in-

corporation, inspection, and the above-described co-operation are necessary safeguards, this court certainly cannot say that it is wrong." A similar decision is given with reference to the Nebraska State Guaranty Law (No. 445, October term, 1910).

In another important case (*Alonzo Bailey, plaintiff in error, v. The State of Alabama*) the court has rendered a decision which will mark a distinct epoch in connection with labor legislation (No. 300, October term, 1910; opinion handed down January 3, 1911). This is the so-called "peonage case" appealed from the Supreme Court of Alabama, and in it the federal court now reverses the opinion of the Alabama court and holds the law unconstitutional. In this case, Alonzo Bailey had contracted to work for a concern called the Riverside Company at the rate of \$12 per month, receiving in advance \$15 in cash, his wages to be reduced to \$10.75 in consideration of the \$15 advanced to him. The manager of the company admitted that Bailey actually received the sum of \$15 and worked under the contract (which was to last a year) one month and three or four days, at the end of which time he stopped work, refusing to pay back the \$15. In view of these facts, Bailey was indicted under sec. 4730 of the code of Alabama as amended in 1907, which provides that any person who has entered into a contract of service, receiving money therefor, and who fails to perform such service, may be punished by fine equal to double the damage suffered by the injured party. In the event of his failure to refund the money or perform the service, his failure was to be regarded as prima-facie evidence of the intent to injure his employer or landlord or defraud him. In this case, as Bailey was not able to pay a fine of \$30 and costs, he was sentenced to hard labor for twenty days in lieu of the fine and 116 days in lieu of the costs.

Justice Hughes, in handing down the decision of the court, takes the view that, although the Alabama statute in terms is to punish fraud, and in that aspect, is, of course, unobjectionable, nevertheless its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt. Judging its purpose by its effect, it seeks in this way to provide the means of compulsion through which the performance of such service may be secured.

In dealing with the question whether such a statute is constitutional, the court notes that if the statute in this case had authorized the employing company to seize the debtor and hold him to the service until he had paid the money he had received or had furnished the equivalent in labor, its invalidity would not be questioned. This would be true under the Thirteenth Amendment, which prohibits involuntary servitude except as a punishment for crime—an exception which does not permit involuntary servitude to be established through the operation of the criminal law by making it a crime to refuse to render such service. Thus, it is reasoned, what the state may not do directly it may not do indirectly. “The provisions designed to secure [freedom of labor]” says the court, “would soon become a barren form if it were possible to establish a statutory presumption of this sort and to hold over the heads of laborers the threat of punishment for crime under the name of fraud but merely upon evidence of failure to work out their debts.” Hence the statute of Alabama must be unconstitutional. Justice Holmes, however, (Justice Lurton concurring) rendered a dissenting opinion on the ground that obtaining money by fraud may be made a crime just as much as murder or theft without any reference to the Thirteenth Amendment of the Constitution.

In the so-called potash case, the maximum clause in the Payne-Aldrich Tariff Act has been subjected to an interesting test. Potash salts are found principally in Germany, where they exist in enormous deposits, there being now 71 mines in operation and nearly as many in process of development. The raw salts are concentrated into muriate and sulphate of potash, the lower grade salts being used for fertilizers, and the higher grade for explosives and chemicals. The United States uses 30 per cent of the entire output and about 60 per cent of the export. During the past 25 years the so-called “German Kali-Syndikat” has controlled the production and prices of the salts in all markets by means of a close monopoly. This syndicate has been formed for periods of five years the last of which expired on June 30, 1909, at midnight. During the few hours between the expiration of the old pool and the establishment of a new one a representative of the American Agricultural Chemical Company made large contracts with individ-

ual mines for a period of seven years at a rate of about 30 per cent below those made by the former syndicate; and in the following September about 65 other American manufacturers secured similar contracts. Meanwhile a new syndicate had been formed and the threat was made that an export duty would be imposed on potash and the profit in the contracts thereby taken. Various efforts to reach a basis of compromise between the syndicate, acting in close harmony with the German government, and the American concerns failed, but during the negotiations as to whether Germany should receive the minimum rates of the Payne-Aldrich Act, that country was informed that the maximum would have to be applied unless the export tax on potash was abandoned. After the German-American negotiations had closed by the mutual granting of minimum tariff rates, Germany (May, 1910) passed the so-called "potash law," whereby a penalty tax on the production of any mine, in excess of the quota allotted to it under the law, was imposed. This surtax was \$22.00 per ton on muriate of potash, the price at which the American contracts had been concluded being only \$15.00 per ton at the mines. Secretary Knox made a protest against this law, but in spite of an assurance that it would not invalidate the American contracts, the Americans were obliged to pay the tax from the time the law went into effect. This they did under protest and Secretary Knox finally sent a commercial agent, M. H. Davis, to Germany to negotiate with the government and the syndicate in the effort to get some mitigation of the conditions. The agent returned late in 1910 after having been completely rebuffed. At that time, the domestic consumers of potash had paid in about \$3,000,000 under protest, this sum being supposed to pass definitely into possession of the German government on January 1. On the strength of this situation and of their entire failure to get relief from Germany, domestic makers of fertilizer have presented to President Taft a demand that he shall impose the maximum rates on German goods inasmuch as the German potash law is tantamount to a discrimination against American interests. Such action is not likely because of the large extent of imports from Germany which would be affected by it, but the incident shows the weakness of the tariff weapon provided under the Payne-Aldrich Law. At the same time the state of facts is of very broad significance from an international stand-

point, while industrially the situation will have an important effect upon the price paid for raw materials by fertilizer makers and producers of chemicals and explosives.

The United States Bureau of Labor has at last completed the first part of the investigation into the condition of woman and child wage-earners which it was directed to make in 1907 and has published the first of a set of nineteen volumes which are to embody the results of the inquiry (Senate Doc., No. 645, 61st Cong., 2d sess.). This first volume deals with the cotton textile industry (the methods of collecting material, tabulations, and textual discussion being substantially similar for all industries studied, these to be presented in successive volumes). The investigation shows that the cotton manufacture employs more people than any other manufacturing industry in the United States except that of foundry and machine-shop products. In woman and child labor it takes first rank, the women wage-earners being 60,000 more numerous than in any other manufacture, while more children are employed than in any other four industries combined. It appears that there has been, taking the country as a whole, a decided decrease in the percentage of females employed in the industry since 1880 and a distinct decrease in the number of children, although in both cases the falling-off has been slower in recent years. In the western states there has been an increase both in females and in children since 1900, while in the southern states, contrary to general opinion, there has been a slight decline in both. In 46 establishments visited in four New England states during 1908, men constituted 51.5 per cent of the total employees, as against 48.6 per cent in all mills of that section in 1905; women had diminished from 45.5 per cent in 1905 to 43.3 in 1908, and children from 6 per cent to 5.2. In the 152 mills visited in 1907-8 in the six southern states, 53 per cent of the employees were men, as against 45.8 in all the mills of that section in 1905; women had fallen to 27 per cent as against 31.1 per cent in 1905, and children had fallen from 23.1 per cent to 20 per cent of the total employees. In 1907-8 the percentage of women had fallen as compared with 1905 in each of the six southern states, and in five of these states under 30 per cent of all employees in the establishments visited were women. The percentage of children fell between 1905 and 1908 in every state except Virginia. The

age at which the greatest employment of females occurred was as follows: Maine, 20 years; Massachusetts and Rhode Island, 21 years; Virginia, 16 years, and each of the other states, 18 years. In the New England group of states, after 21 years of age, the decline in the number of female employees is quite rapid. In the South, a similar drop occurs after 18 years, the withdrawal from the industry being due to the number who leave on account of marriage. While there was a much higher percentage of children employed in the southern states, the percentage of women is correspondingly lower, so that the women and children combined constitute about the same proportion of the total employees in each section. This does not mean that the work done by women in the New England mills is done by children in the South, but the variation is due to various conditions, chief among which is the difference in the character of the product and of the labor supplied. This volume with its tabular appendices makes up 1,044 pages. It is probable that no such complete investigation of the conditions studied has ever before been made.

New conditions in the pending railroad rate cases have been established by President Taft by his appointment of two new members of the Interstate Commerce Commission, Professor B. H. Meyer, originally of the University of Wisconsin and subsequently of the Wisconsin State Railway Commission, and C. C. McChord, formerly of the Kentucky Railway Commission. Mr. Meyer succeeds Judge Martin A. Knapp, formerly chairman of the commission, who now becomes chief justice of the new Court of Commerce established under the amended interstate commerce law of last June, and Mr. McChord succeeds ex-Senator Cockrell, who retires from the commission. Both of the new appointees are well recognized as leaning to the side of government control of railroads in the more stringent sense of the term, while Chairman Knapp was counted as being certainly, and ex-Senator Cockrell as being probably, opposed to that point of view. The two new members, taking office immediately after the holidays, have joined with the older members of the commission in hearing the argument of attorneys on the rate cases, January 9-21. Final hearings in these cases had been completed in December and the work of the month of January has been the presentation of argu-

ment on the part of counsel for the roads and the shippers. In these are analyzed (1) the results of the remarkable investigation made by the commission through the medium of the statistical inquiry blank sent to railroads about the end of November, and (2) the multitudinous data developed in the testimony. For this purpose there has been presented a series of striking briefs (docket No. 3400: brief on behalf of the National Industrial Tariff League and the Shippers Association, brief on behalf of Traffic Committee of Commercial Organizations of the Atlantic Seaboard, brief for the National Petroleum Association, brief of the Erie Railroad Company, brief of the New York Central Railroad Company, brief of the Pennsylvania Railroad Company, etc.). Out of the immense mass of data in controversy in these arguments, three important issues emerge: (1) Do the railroads now need higher rates in order to make proper provision for betterments and pay necessary interest and dividend charges? (2) Can such provision be made by effecting a saving in present cost of operation and by reorganizing methods of railroad management? (3) Are existing tariffs fairly adjusted as between the different commodities and classes of goods found in existing railroad classifications, and are they fairly adjusted geographically? So complex are the issues involved that it is already evident that at least one further postponement of the date when the proposed rates would take effect in the natural course of events will have to be made. Eliminating all of the unessential issues presented in the December hearings, the controversy has settled down into a discussion of the present financial condition and business organization of the roads and this, as the argument of attorneys has made evident, probably cannot be permanently settled by the decision in these cases. The tendency indicated by the argument in the rate cases undoubtedly is toward a long-drawn-out continuation of the controversy including as one of its incidents a more or less extensive physical valuation of the roads.

Controversy and discussion regarding a tariff commission has now pretty definitely settled about the so-called "Longworth Tariff Commission Bill" (H.R. 30,288) offered in the House of Representatives by Nicholas Longworth of Ohio, January 5, 1911. This bill represents the outcome of the administration's negotiations during the month of December with the various factions in Con-

gress. It calls for the creation of a permanent tariff commission of five members, no more than three to belong to any one political party and such commission to have the power of appointing and fixing the pay of employees. Its duties are to consist chiefly of investigating the cost of production of commodities and reporting to the President and to Congress upon request. This bill has received the endorsement of the National Tariff Commission League consisting of representative business men and manufacturers from all parts of the United States, in session at Washington, January 11-13, but is sharply criticized on the following grounds: (1) the bipartisan character of the body, (2) its lack of provision for publicity of accounts and operations, (3) the insistence upon cost-of-production investigations.